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10/581,010

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Maria Gross

3706

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7590

01/25/2010

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EXAMINER

BOMBERG, KENNETH

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

01/25/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/581,010 | Applicant(s) GROSS ET AL. | |
| | Examiner KENNETH BOMBERG | Art Unit 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the:

Structure described in claims 1 and 2 as “a spring-elastic valve stem” (while the valve stem 8 is depicted per se, it being “spring-elastic” is not); and

Structure described in claim 5 as “decorative elements”;
must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

In Reference to Claims 1 and 2

While the phrase “spring-elastic valve stem” finds literal antecedent basis in the specification, it does not find clear support or antecedent basis in the description so that the meaning of this phrase in the claims may be ascertainable by reference to the description. The examiner is unfamiliar with this phrase and it is unclear if it has an art known specific meaning or is merely an imprecise translation of the valve stem having an elastic spring.

In Reference to Claim 5

In line 3, the phrase “includes decorative elements formed thereon” does not have literal support in the specification, and it is not clear what would or would not be encompassed by “decorative elements”.

Claim Objections

3. Claim 6 is objected to because of the following informalities:

In line 2, “gap” is a typographical error of --cap--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Reference to Claim 1

In lines 6-10, it is unclear if the recitation of “wherein said foam head is configured to...for applying a partial amount of foam” is functional recitation or a positive recitation of the spring-elastic valve stem. The use of “wherein” and “configured to” within the context of the claim implies a functional recitation, however Applicant’s arguments asserting that since the prior art does not show the particular valve that the claims should be patentable, implies a positive recitation. Appropriate correction or clarification is required.

In lines 11-12, it is unclear if the “outer diameter” makes reference to the “lower portion” or “lower region”.

In line 18, “for receiving an annular spring” is not understood within the context of the claim and disclosure. Specifically, the “at least one recess” is disclosed on page 3, lines 32-34 as “forming” the “annular spring”; it is therefore unclear what is meant by “receiving” within the context of the claim and disclosure.

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In Reference to Claim 2

In lines 6-10, it is unclear if the recitation of “wherein said foam head is configured to...for applying a partial amount of foam” is functional recitation or a positive recitation of the spring-elastic valve stem. The use of “wherein” and “configured to” within the context of the claim implies a functional recitation, however Applicant’s arguments asserting that since the prior art does not show the particular valve that the claims should be patentable, implies a positive recitation. Appropriate correction or clarification is required.

In lines 18-19, “for receiving an annular spring” is not understood within the context of the claim and disclosure. Specifically, the “at least one recess” is disclosed on page 3, lines 32-34 as “forming” the “annular spring”; it is therefore unclear what is meant by “receiving” within the context of the claim and disclosure.

In line 20, “the upper region” lacks antecedent basis.

In Reference to Claims 4 and 5

The phrases “is configured to prevent slipping” and “decorative elements formed thereon” in claims 4 and 5 render the claim indefinite read in light of the specification. The recitation of “is configured to prevent slipping” is not defined by the claim, the specification does not provide an explanation of what constitutes this configuration, and one of ordinary skill in the art would not be reasonably apprised of what configurations would or would not meet this recitation. The phrase “decorative elements formed thereon” does not find support in the specification, and while “decorative” is described on page 4 of the specification as including “a special coloring and/or imprint”, it is unclear

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what other aspects such as shape or surface reflectivity would or would not be encompassed by “decorative elements formed thereon”. It is not clear if the disclosed “coloring” would fall within the claim language as an item that is made of a colored material would not be considered an “element formed thereon” giving the words their ordinary meaning.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,096,002 to Focht (Focht) in view of US Patent No. 3,865,283 to Hayes (Hayes).

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In Reference to Claim 1

Focht teaches:

A foam head (“dispensing head”; col. 2, lines 13-25; Figs. 2-3) for a propellant container (Figs. 1 and 4;1), comprising:

a valve plate (2) having inner and outer crimped edges (Figs. 1 and 4);

an actuation button (12);

a foam dispensing opening (10), wherein said foam head is configured to be seatable directly on a valve stem (5), wherein said valve stem is a spring-elastic valve stem (col. 2, line 56), wherein said spring-elastic valve stem (5) is configured to apply a resorting force (col. 2, lines 55-60) after actuation of said actuation button (12) for applying a partial amount of foam;

a lower portion (Figs. 1 & 4; below boss 8 above cup 2) having a lower region (below lower portion) and having an outer diameter approximately equal to an inner diameter of the inner crimped edge (see Figs. 1 and 4, the diameters are “approximately equal”);

an outer rib (Figs. 1 and 4; 7) disposed in the lower region of the lower portion, diametrically opposite the actuation button (12) for engagement from beneath of a lower side of the inner crimped edge (see Figs. 1 and 4),

Focht does not teach the following structures taught by Hayes:

wherein a lower peripheral region (Fig. 6; skirt portion 52b adjacent nibs / beads 54b) of the lower portion has at least one recess (Fig. 6; 55) for receiving an annular spring (“receiving” has been interpreted in light of the specification as “forming”),

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wherein said foam head is configured, such that upon actuation of said foam head, said foam head remains joined to said propellant container and is incapable of undesired removal from said propellant container (col. 4, line 67 to col. line 22).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11).

9. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,096,002 to Focht (Focht) in view of US Patent No. 3,865,283 to Hayes (Hayes) and US Patent No. 3,156,382 to Michell (Michell).

In Reference to Claim 2

Focht teaches:

A foam head ("dispensing head"; col. 2, lines 13-25; Figs. 2-3) having a propellant container (Figs. 1 and 4;1), comprising:

- a valve plate (2) having an inner and outer crimped edge (Figs. 1 and 4);
- an actuation button (12);

- a foam dispensing opening (10), wherein said foam head is configured to be seatable directly on a valve stem (5), wherein said valve stem is a spring-elastic valve stem (col. 2, line 56), wherein said spring-elastic valve stem (5) is configured to apply a

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resorting force (col. 2, lines 55-60) after actuation of said actuation button (12) for applying a partial amount of foam

a lower portion (Figs. 1 & 4; below boss 8 above cup 2) having an outer diameter approximately equal to an inner diameter of the inner crimped edge (see Figs. 1 and 4, the diameters are “approximately equal”);

an outer rib (Figs. 1 and 4; 7) disposed in a lower region of the lower portion, diametrically opposite the actuation button (12) for engagement from beneath of a lower side of the inner crimped edge (see Figs. 1 and 4),

Focht does not teach the following structures taught by Hayes:

wherein a lower peripheral region (Fig. 6; skirt portion 52b adjacent nibs / beads 54b) of the lower portion has at least one recess (Fig. 6; 55) for receiving an annular spring (“receiving” has been interpreted in light of the specification as “forming”), wherein said foam head is configured, such that upon actuation of said foam head, said foam head remains joined to said propellant container and is incapable of undesired removal from said propellant container (col. 4, line 67 to col. line 22).

Focht does not teach the following structures taught by Michell:

a sleeve (11; Figs. 1-4) sheathing at least the upper region (19) of the propellant container (10), wherein the outer crimped edge (of mounting cup 12) is a connecting seat of said sleeve (col. 2, lines 27-33).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the teaching of Hays to incorporate at least one recess in the lower peripheral region of the skirt (13) of Focht in order to permit inward yielding of the skirt during assemblage

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to the container while maintaining the dispensing head on the container during use as taught by Hayes (col. 4, line 67 to col. 5, line 11).

It would have also been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the sleeve teaching of Michell into the foam head and propellant container of Focht as modified by Hayes in order to facilitate the inclusion of a desired over cap as explicitly taught by Michell (see col. 1, lines 26-53).

In Reference to Claim 3

The sleeve taught by Michell is a “graspable part” (see Figs. 1-4).

In Reference to Claim 4

The specification has not identified any particular structural features that provides the “configured to prevent slipping” and has not provided any standard by which the “configured to prevent slipping” can be ascertained. Consequently to the extent that applicants device as claimed is slip proof, the sleeve of Michell as applied to the device of Focht as modified by Hayes is considered “configured to prevent slipping”.

In Reference to Claim 5

Michell discloses that the sleeve may be of a desired color; consequently it is considered to have “decorative elements formed thereon” to the same extent of applicants’.

In Reference to Claim 6

Michell teaches an upper part of the sleeve (11) is provided with a clamping bead (35, 36; col. 3, lines 26-32) for mounting a guard cap (13) in such a way that it can be

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released again, and the outer diameter of the clamping bead (36; Fig. 5) is equal to the outer diameter of the crimped edge (outside of mounting cup 12; Figs. 5-6). When Focht as modified by Hayes is further modified by Michell, to include the sleeve and guard cap, the resulting device meets the claim. Michell further teaches that the sleeve (collar 11) permits the mounting of a desired size over cap (col. 1, lines 41-52).

Response to Arguments

10. Applicant's arguments filed October 29, 2009 have been fully considered but they are not persuasive.

Applicants argue:

Neither Focht nor Hayes discloses that the foam head remains joined to the propellant container when the foam head is actuated so that it does not fall off AND a spring-elastic valve stem that applies a restoring force as defined in amended claims 1 and 2.

It is initially noted that Applicant's arguments are not commensurate in scope with the claims. Specifically, claims 1 and 2 recite the valve stem (8) within the context of a functional recitation "wherein said foam head is configured to be", thus there is never a positive recitation of the valve stem / spring-elastic valve stem constituting a part of the foam head. Never the less, to the extent that "spring-elastic valve stem" is interpreted to be a valve stem biased by a spring, applicants attention is directed to Focht col. 2, lines 55-60 which discloses such valves as being generally equipped with a spring. With respect to the foam head remaining joined to the

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propellant container, Hayes explicitly teaches the foam head is remains joined to the propellant container (see col. 5, lines 14-16).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH BOMBERG whose telephone number is (571)272-4922. The examiner can normally be reached on Monday-Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Kenneth Bomberg/
Primary Examiner, Art Unit 3754